

Notice of Allowability

Application No.

10/662,902

Examiner

Rebecca L. Anderson

Applicant(s)

ACHTEN ET AL.

Art Unit

1626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed 11 July 2006.
2. ☒ The allowed claim(s) is/are claims 1 and 2.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 20060911.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

DETAILED ACTION

Claims 1 and 2 are currently pending in the instant application and appear allowable over the prior art of record.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Nicanor Kohncke on 11 September 2006.

The application has been amended as follows:

1. Amend claim 1 by inserting --which has linkage at the nitrogen atom of said pyrrole to the -CS₂-R group-- after the term "pyrrole" and before the period.
2. Cancel claims 3-7.

Election/Restrictions

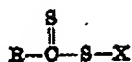
Claim 1 is directed to an allowable product. Pursuant to the procedures set forth in MPEP § 821.04(b), claim 2, directed to the process of making or using the allowable product, previously withdrawn from consideration as a result of a restriction requirement, is hereby rejoined and fully examined for patentability under 37 CFR 1.104. Claims 3-7 directed to the invention(s) of different products and their methods of preparation do not require all the limitations of an allowable product claim, and are **NOT** been rejoined.

Because a claimed invention previously withdrawn from consideration under 37 CFR 1.142 has been rejoined, **the restriction requirement between groups I and II as set forth in the Office action mailed on 10/25/2005 is hereby withdrawn.** In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Reasons for Allowance

The following is an examiner's statement of reasons for allowance. This invention relates to products of the formula (I) and the process of preparing products of the formula (I). The novel and nonobvious aspect of this invention involves the substituent Z. The closest prior art of record, US Patent No. 3,078,153 discloses the compounds of the formula R-C(=S)-S-X, column 1:

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R in the above formula represents a hydrocarbon mono-nitrogen heterocyclic radical. Examples of R are the radicals derived by removal of the hydrogen from the nitrogen of ethylenimine, tetrahydropyridine, pyrrolidine, 2-methylpyrrolidine, 2,3-dimethylpyrrolidine, 2,5-dimethylpyrrolidine, piperidine, 2-methylpiperidine, 4-methylpiperidine, 5-ethyl-2-methylpiperidine, 5-ethyl-3-methylpiperidine, 2,3-dimethylpiperidine, 2,4-dimethylpiperidine, 2,4,6-trimethylpiperidine and hexamethylenimine. X may be lower alkyl, lower monoolefinic hydrocarbon or halogen substituted lower monoolefinic hydrocarbon. Examples are methyl, ethyl, butyl, propyl, isopropyl, allyl, 2-chloroallyl, 2-bromoallyl, 2-fluoroallyl, 2-iodoallyl, 3-chloroallyl, 3-bromoallyl, 3-fluoroallyl, 3-iodoallyl, 3-chloro-2-butenyl, 3-bromo-2-butenyl, 3-fluoro-2-butenyl, 3-iodo-2-butenyl, 2,3-dichloroallyl, 3,3-dichloroallyl, 2,3-dichloro-2-butenyl, 2,3-diiodo-2-butenyl, 2-fluoro-3-chloroallyl, 2,3-dibromoallyl, 3,4,5-trifluoro-3-butenyl and 2,3,3-trichloroallyl.

which are phytotoxic esters useful for the destruction of or controlling of undesired vegetation, column 1. A specific compound disclosed in US Patent No. 3,078,153 is the compound of **2-chloroallyl 1-pyrrolidinecarbodithioate**, which is disclosed in Table III.

However, the prior art of US Patent No. 3,078,153, while disclosing that R can be a hydrocarbon mono-nitrogen heterocyclic radical, fails to provide any direction or motivation to prepare the compounds as instantly claimed in the elected invention wherein Z is a substituted or unsubstituted pyrrole and fails to teach or suggest applicants instantly claimed invention.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

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Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rebecca L. Anderson whose telephone number is (571) 272-0696. Mrs. Anderson can normally be reached Monday through Friday 5:30AM to 2:00PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Joseph K. McKane, can be reached at (571) 272-0699.

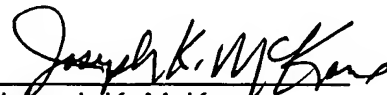
The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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9/11/06



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